



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

BCS/145024

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 1, 2012, under Wis. Stat. §49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on November 27, 2012, at Milwaukee, Wisconsin.

The issues for determination are whether the agency correctly determined that petitioner must pay a \$91 premium for MA effective December 1, 2012 and whether the agency must remove petitioner's child from her MA case because she is attending college.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Alma Lezama

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who has been certified for MA, and has been receiving BadgerCare Plus MA.

2. On August 29, 2012 the petitioner reported to the agency that one of her children was moving out of her home to go to college, as the college requires that the child live on campus. This changed her household composition to a household of two for MA purposes.
3. On October 24, 2012 the agency issued a notice of decision to petitioner stating that effective December 1, 2012 she would be eligible for MA with a premium of \$91. Petitioner's budgetable monthly household income was \$2030.40.
4. Effective July 1, 2012, BC+ eligibility was based upon a change in Department policy.

### DISCUSSION

The 2011-13 Wisconsin State Budget, Act 32, required the Department to pursue eligibility changes to the Medicaid program. In order to comply with Wisconsin law and make the necessary eligibility changes, Wisconsin requested changes to its current BC+ waivers for families and childless adults. The Centers for Medicare and Medicaid Services (CMS) approved changes to BC+ policy which include premium reforms, Restrictive Re-enrollment (RRP) reforms, changes to the policy regarding access to health insurance and changes to the back dating policy. See *BEPS/DFS Operations Memo no. 12-27*, dated June 1, 2012, page 1, available online at <http://www.dhs.wisconsin.gov/em/ops-memos/2012/pdf/12-27.pdf>.

Effective with July, 2012 BC+ benefits, the Department began to use a sliding scale for determining premiums for non-pregnant, non-disabled adults with income over 133% of the Federal Poverty Limit (FPL). Under the old policy adults did not pay premiums unless income was over 150% of the FPL. See *BEPS/DFS Operations Memo no. 12-25*, dated April 27, 2012, page 2, available online at <http://www.dhs.wisconsin.gov/em/ops-memos/2012/pdf/12-25.pdf>. The April 27 Memo showed the scale for the premiums. For a family size of two, income in the range of \$1,891.25 - 2,143.41 would result in a premium between \$76 - 96.

Petitioner's undisputed household income totals \$2030.40 for the relevant time period. This is between 150%-185% of the FPL for a two-person household. See *BadgerCare+ Eligibility Handbook*, §50.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. Based upon the new policy the agency correctly determined a \$91 premium effective December 1, 2012 based upon monthly income. Because this is a state-wide change, the Division of Hearings and Appeals does not have authority to find the change to be invalid or that petitioner should be exempt from the change. I can find no error in the agency's computations or that they failed to properly notice petitioner of these changes to her case.

I must also add that the agency does not have to remove the child from the case *if petitioner wants* the child to remain on her case under the "temporary absence" policy. Petitioner testified to the college requirement that the child live on campus, but that she would not be living there continuously given semester and spring breaks, and the like. According to the *BadgerCare+ Eligibility Handbook*, when a child under age 19 who is a student living away from their parent's home applies for BC+, the child and his/her family can determine whether the student will be a group of 1 on his/her own case, or a temporarily absent individual included in his/her parent's case. See §2.3.3. This may trigger a different premium amount, however, as seen through the notice dated 11/9/12, which came about due to this appeal and what is known in the parlance as a "shall not". In other words, petitioner's appeal request to continue the benefits at the same level caused the child to remain on petitioner's case, and it does show a different premium due to the child's income. If petitioner desires that her child remain on the case, I am finding that she may do so if she requests it of the agency. If she does not, the child can still apply for her own MA, and petitioner is left with the result of the \$91 premium in a two person household.

There are no other exceptions that I could find that would show me that petitioner is somehow exempt from paying the premium, or that it could be changed based on fairness. I certainly understand that

affording the premium can be difficult, and even impossible. However, administrative law judges do not have the power to address issues of equity. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. We are required to apply the law as written by the legislators.

### **CONCLUSIONS OF LAW**

1. The agency correctly determined that petitioner must pay a premium for MA effective December 1, 2012.
2. The petitioner may request her college age child remain on her MA case under the temporary absence policy.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

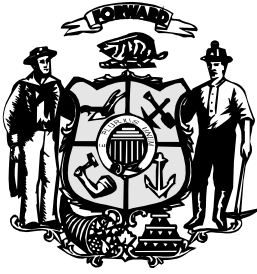
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 21st day of December, 2012

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 21, 2012.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability